



December 16, 2002

By Electronic Filing

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: ***EX PARTE***
IB Docket No. 01-185; ET Docket No. 95-18

Dear Ms. Dortch:

ICO Global Communications (Holdings) Ltd. (“ICO”),¹ more than a year and half ago asked the Commission to enable more efficient and flexible use of mobile satellite service (“MSS”) spectrum by allowing 2 GHz MSS licensees to offer ancillary terrestrial component (“ATC”) capability. The Commission has moved forward with this proposal, and ICO is hopeful that an order addressing this proposal will be adopted in the near term.

As ICO has assured the Commission from the outset, ATC is not designed to serve as a stand-alone terrestrial system, but as a means for 2 GHz MSS systems to realize their original promise of offering a single telecommunications platform for every customer, anytime, anywhere.² ICO consistently has maintained that ATC should operate only in conjunction with a launched satellite system³ and continues to support the Commission’s initial “gating” proposals for restricting ATC as an ancillary service.⁴ If,

¹ ICO is the parent company of ICO Satellite Services G.P., which is authorized to provide 2 GHz mobile satellite services (“MSS”) in the United States.

² See Comments of New ICO Global Communications (Holdings), Ltd., IB Docket No. 01-185 & ET Docket No. 95-18, at 43-44 (Oct. 22, 2001); Letter from Lawrence H. Williams and Suzanne Hutchings, New ICO Global Communications (Holdings), Ltd., to Chairman Michael K. Powell, FCC, IB Docket No. 99-81, at 6 (Mar. 8, 2001).

³ *Id.* at 7.

⁴ The Commission stated its intent to treat terrestrial services as “ancillary” if

1730 Rhode Island Ave., NW
Suite 1000
Washington, DC 20036

202 721 0960 phone
202 296 8953 fax
web: www.ico.com

however, the Commission decides to impose additional gating requirements, it must avoid rigid regulatory requirements that restrict technological innovation, limit consumer choice, and ultimately increase consumer costs. For example, the Commission could require that all MSS user terminals be capable, either directly or in conjunction with components that are designed to work together, of transmitting and receiving communications through the MSS licensee's satellite platform. Customers, however, should be permitted to purchase components separately.

ICO opposes any regulatory mandates that (1) prohibit the sale of separate satellite "personal repeaters" devices and ATC user terminals or (2) only permit the sale of bundled satellite repeaters and ATC user terminals. Mandating dual-mode, satellite-ATC devices would force rural customers, who have fewer mobile service options and are more reliant on satellite technology, to pay more than their urban counterparts for user terminals that can offer access to cutting-edge, broadly deployed digital networks. Moreover, it would be at odds with both longstanding Commission policies for customer equipment and emerging trends in wireless services.

Specifically, a user terminal bundling requirement is unduly burdensome and economically inefficient because it forces customers to accept, and pay for, services and features that they may not want. The Commission sought precisely to avoid this result when, two decades ago, it deregulated the provision of telephones and other customer premises equipment ("CPE") by requiring carriers to unbundle CPE from the provision of regulated telecommunications services. The Commission found that requiring customers to accept bundled CPE and service packages could force them to purchase unwanted equipment, thus "limiting the freedom of customers to be able to put together the service and equipment package most desired by them."⁵ By the same token, mandating the

they: (1) are provided by MSS operators and are integrated with the satellite network; (2) use assigned MSS frequencies; (3) are provided for the purpose of augmenting signals in areas where the satellite signal is attenuated; and (4) are materially similar in nature to the principal satellite services. *See Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band*, Notice of Proposed Rulemaking, 16 FCC Rcd 15532, 15546 ¶ 30 (2001). The Commission further proposed to condition ATC use upon satellite coverage of all 50 states, Puerto Rico, and the U.S. Virgin Islands at all times. *Id.* at 15547 ¶ 32. The Commission noted that its proposal would allow L-band MSS operators to seek an exception from the U.S. coverage requirement if it is not technically possible for the operator to meet the coverage requirement from its orbital position. *Id.*

⁵ *Amendment of Section 64.702 of the Commission's Rules and Regulations*, 77 FCC 2d 384, 443 ¶ 149 (1980). The Commission eliminated its CPE bundling restrictions by first allowing cellular carriers to offer cellular CPE and services on a bundled basis and subsequently allowing all common carriers to offer bundled packages of CPE and telecommunications services. *See Bundling of Cellular Customer Premises Equipment and Cellular Service*, 7 FCC Rcd 4028, 4028 ¶ 1 (1992); *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 16 FCC Rcd 7418, 7419 ¶ 1 (2001). These actions, however, are consistent with the Commission's overall CPE deregulatory policies. Rather than imposing any regulatory mandate to provide CPE on a bundled or unbundled basis, the Commission chose to rely on market forces to provide customers with a broad range of bundled and unbundled CPE packages.

manufacture of dual-mode, satellite-ATC devices or the bundling of satellite repeaters and ATC user terminals would limit the variety of terminal equipment that can offer each customer an optimal mix of service features and capabilities.

Consistent with its well-established CPE deregulatory policy, the Commission recently signaled a desire to move away from legacy command-and-control regulation of spectrum use, which requires the government, instead of the market, to dictate service offerings and equipment technology.⁶ A requirement to provide only dual-mode, satellite-ATC devices is not necessary to prevent harmful interference, will not advance any compelling public interest goal, and therefore is the type of command-and-control regulation that the Commission must reject as obsolete and market-inefficient.

Furthermore, prohibiting the sale of separate satellite repeaters and ATC user terminals would stymie innovation in equipment design and functionality. Wireless devices are constantly being redefined as the technology evolves and customer preferences become more individualized. Terrestrial wireless carriers currently offer a broad range of wireless phones and other devices, such as personal digital assistants (“PDAs”), modems, MP3 players, headsets, and digital cameras. These devices can be used separately or in conjunction with other wireless equipment to provide voice, data, and broadband services. MSS providers must have the same flexibility to differentiate their services by offering a diverse array of wireless user terminals designed to meet the individual needs of their customers.

Specifically, ICO intends to offer digital voice and data services through satellite air-interface repeaters that allow customers to connect their computer laptops, PDAs, Blackberries, MP3 players, digital cameras, and other digital devices to its satellite network.⁷ Using these satellite air-interface repeaters, customers can transform their short-range digital equipment into satellite-capable devices with seamless, global reach. They also can obtain satellite services without being tethered to any specific type of digital equipment and without being required to purchase new satellite hardware with each generation of digital equipment. Customers, however, will be unable to enjoy these benefits if equipment features that are ill-suited for the type of satellite services that customers demand must be integrated into every ICO-enabled device.

⁶ See FCC Chairman Michael K. Powell, Broadband Migration III: New Directions in Wireless Policy, Remarks at the Silicon Flatirons Telecommunications Program, University of Colorado at Boulder (Oct. 30, 2002) (command-and-control regulation “requires government officials--instead of spectrum users--to determine the best use for spectrum and make value judgments about proposed--and often over-hyped--uses and technologies”); SPECTRUM POLICY TASK FORCE REPORT, FCC, ET Docket No. 02-135, at 16 (Nov. 2002) (“In most instances, a flexible use approach is preferable to the Commission’s traditional ‘command-and-control’ approach to spectrum regulation.”).

⁷ These satellite air-interface repeaters would operate as wireless access points that provide service links to the satellite system and can connect with a customer’s laptop, PDA, Blackberry, MP3 player, digital camera, or other digital device, either through a physical connection or a wireless link using Wi-Fi or Bluetooth technology.

Moreover, requiring dual-mode, satellite-ATC user terminals would add unnecessarily to the size and cost of the devices. The smallest dual-mode satellite-terrestrial user terminals currently sold in the United States are far larger, more expensive, and less power-efficient than terrestrial wireless phones that are available today or satellite user terminals that could be offered in the near future. For example, the smallest, least expensive MSS handsets currently sold in the United States are almost the size of a house brick and can cost as much as \$895 to \$1,495.⁸ Based on the market rejection of existing MSS user terminals, several equipment manufacturers have turned down ICO's solicitations for the production of similar dual-mode MSS user terminals. In contrast, based on price quotes from equipment manufacturers and other cost data, ICO estimates that satellite air-interface repeaters would cost as little as \$250. Additionally, ATC user terminals are estimated to cost approximately \$100 to \$300, which is comparable to the cost of terrestrial wireless phones. Thus, ICO fully expects that the availability of separate satellite air-interface repeaters and ATC user terminals will permit customers to purchase either or both types of equipment at significantly lower prices than those for existing dual-mode MSS phones.

To attract sufficient demand for ATC services by customers that seek smaller, less expensive terrestrial-use devices with a longer battery life, MSS providers must have the flexibility to offer ATC user terminals that are more comparable in size, cost, and battery life to existing terrestrial wireless phones. In addition, because ICO intends to offer data, in addition to voice, services over its satellite system, it must be able to provide satellite air-interface repeaters that are conveniently sized, have a longer battery life, and can easily connect with laptops, PDAs, Blackberries, MP3 players, digital cameras, and other digital devices. Mandating bulky, power-hungry, dual-mode satellite-ATC user terminals that are incompatible with customers' existing or new digital devices will deter them from purchasing satellite services.

Requiring the bundled sale of satellite air-interface devices and ATC devices also would increase consumer costs in at least two ways. First, it would force some customers to pay for additional satellite or ATC features that they otherwise would not purchase. Second, terrestrial devices have a much shorter design cycle than satellite air-interface repeaters. Specifically, a typical terrestrial wireless phone is estimated to have a life cycle of approximately six months to one year, while the more advanced satellite air-interface repeater is estimated to have a much longer life cycle of approximately three years. Consequently, customers who seek merely to replace their ATC user terminals would be forced prematurely to replace their existing satellite air-interface repeater with new and unnecessary equipment. These additional costs will deter potential customers and prevent MSS providers from achieving the economies of scale necessary to sustain commercial viability.

⁸ See Satellite-Phones.org, <http://www.satellite-phones.org/globalstar1600.html> (last visited Dec. 13, 2002) (offering Globalstar dual-mode MSS phones, weighing at 370 g., or 13 oz., for \$895); Satellite-Phones.org, <http://www.satellite-phones.org/iridium-9505-satellite-phone.html> (last visited Dec. 13, 2002) (offering Iridium single-mode MSS phones, weighing at 375 g., or 13.25 oz., for \$1,495).

Although ICO expects customers to purchase user terminals offering both ATC and satellite capabilities, their decision to do so should be driven by market forces, rather than regulatory fiat. Properly crafted ATC gating requirements will ensure that MSS operators that invest the billions of dollars necessary to launch fully capable satellite systems will not irrationally abandon their satellite services and re-structure their businesses merely to provide ATC services. Simply put, no rational investor or financial institution would risk its limited capital on an MSS company that would waste its resources on building a satellite system it does not intend to use. The economics of using severely limited MSS spectrum to provide only ATC services in highly competitive terrestrial wireless markets would not justify an MSS licensee's abdication of the business case for satellite-based services. Accordingly, ICO supports ATC gating requirements designed to facilitate deployment of fully capable satellite systems and strongly opposes user terminal restrictions that do not ensure the provision of satellite-based services, but rather limit consumer choice, technological innovation, and the full potential of ATC-integrated MSS offerings.

An electronic copy of this letter is being filed for inclusion in the public record, as required by Section 1.1206 of the Commission's Rules.

Very truly yours,

/s/ Lawrence H. Williams

Lawrence H. Williams
Suzanne Hutchings

cc: Parties listed on attached Certificate of Service

CERTIFICATE OF SERVICE

I, Theresa L. Pringleton, hereby certify that a copy of the foregoing **EX PARTE LETTER** has been served this 16th day of December 2002 by electronic mail on the following:

Bryan Tramont
Senior Legal Advisor
Office of Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, SW, Room 8-B115E
Washington, DC 20554

Paul Margie
Spectrum and International Legal Advisor
Office of Commissioner Michael Copps
Federal Communications Commission
445 12th Street, SW, Room 8-A302
Washington, DC 20554

Samuel L. Feder
Spectrum and International Legal Advisor
Office of Commissioner Kevin Martin
Federal Communications Commission
445 12th Street, SW, Room 8-A204
Washington, DC 20554

John Branscome
Acting Legal Advisor
Office of Commissioner Kathleen Abernathy
Federal Communications Commission
445 12th Street, SW, Room 4-A161
Washington, DC 20554

Barry Ohlson
Spectrum and International Legal Advisor
Office of Commissioner Jonathan Adelstein
Federal Communications Commission
445 12th Street, SW, 8th Floor
Washington, DC 20554

Richard B. Engelman
Chief Engineer
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-A668
Washington, DC 20554

Donald Abelson, Chief
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-C750
Washington, DC 20554

Breck J. Blalock
Deputy Chief, Policy Division
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-A764
Washington, DC 20554

Thomas R. Tycz
Chief, Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-A665
Washington, DC 20554

Christopher Murphy
Senior Legal Advisor
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-C750
Washington, DC 20554

James L. Ball
Chief, Policy Division
International Bureau
Federal Communications Commission
445 12th Street, SW, Room 6-A763
Washington, DC 20554

Karl Kensinger
International Bureau
Federal Communications Commission
445 12th Street, S.W., 6th Floor
Washington, DC 20554

Howard Griboff
Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, S.W., 6-C467
Washington, DC 20554

Jennifer Gilsenan
Chief, Policy Branch
Satellite Division
International Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

/s/ Theresa L. Pringleton

Theresa L. Pringleton